

**IT IS THE VENDOR'S RESPONSIBILITY TO CHECK
FOR ADDENDUMS PRIOR TO SUBMITTING PROPOSALS**

**NOTICE TO BIDDERS
SPECIFICATION NO. 07-189**

The City of Lincoln, Nebraska intends to enter into a contract and invites you to submit a sealed bid for:

**CONSTRUCTION OF RAIN GARDENS
INSTALLATION OF RAIN BARRELS &
PROVIDE NO/LOW PHOSPHORUS FERTILIZER
AT VARIOUS LOCATIONS**

A pre-bid conference will be held on Tuesday, June 19, 2007 at 1:30 p.m. at The Purchasing Conference room located at 440 South 8th Street, Lincoln NE.

Sealed bids will be received by the City of Lincoln, Nebraska on or before **12:00 noon Wednesday, June 27, 2007** in the office of the Purchasing Agent, Suite 200, K Street Complex, Southwest Wing, 440 South 8th Street, Lincoln, Nebraska 68508. Bids will be publicly opened and read at the K Street Complex.

Document(s) may be downloaded at <http://www.lincoln.ne.gov>. Keyword: bids. Prospective submitters must monitor the bid listing for any addendums.

Bidders should take caution if U.S. mail or mail delivery services are used for the submission of bids. Mailing should be made in sufficient time for bids to arrive in the Purchasing Division, prior to the time and date specified above. It is the responsibility of all bidders to check for addendum(s) prior to submitting bids. Late bids will not be considered. Fax or e-mail bids are not acceptable. Bid response must be in a sealed envelope.

SPECIFICATION NO. 07-189
BID OPENING TIME: 12:00 NOON
DATE: June 27, 2007

The undersigned bidder, having full knowledge of the requirements of the City of Lincoln for the below listed items and the contract documents (which include Notice to Bidders, Instructions to Bidders, this Proposal, specifications, Contract, and any and all addenda) and all other conditions of the Proposal, agrees to sell to the City below the listed items for the performance of this Specification, complete in every respect, in strict accordance with the contract documents at and for unit prices listed below.

ADDENDA RECEIPT: The receipt of addenda to the specifications numbers _____ through _____ are hereby acknowledged. Failure of any bidder to receive any addendum or any interpretation of the specifications shall not relieve the bidder from obligations specified in the bid request. All addenda shall become part of the final contract document.

REQUIREMENTS FOR
Design & installation of rain gardens
Provide & install rain barrels &
Provide no/low phosphorus fertilizer

WORK REQUIREMENTS

PRICE

Provide and install rain barrel of 50 gallon or greater capacity at home owner site (Up to 20 barrels)	Price per Barrel	\$ _____/barrel
Site investigation to determine suitability for rain garden feature. (Up to 40 sites)	Price per site	\$ _____/site
Design and construct rain gardens at home owner sites (Up to 20 gardens)	Price per sq. ft	\$ _____/sq. ft.
Provide up to 1000 bags of no/low phosphorus (2% or less) fertilizer. (Bag size to cover 5000 sq. ft. of lawn)	Price per bag	\$ _____/bag

Contract period is through June 2008

BID SECURITY REQUIRED: YES ____ NO X

Contract Extension Renewal is an Option (Subject to mutual consent by Contractor and City)

YES _____ NO _____

TERM PRICE CLAUSE:

Bid prices firm for the full contract period: _____

AFFIRMATIVE ACTION PROGRAM: Successful bidders will be required to comply with the provisions of the City's Affirmative Action Policy (Contract Compliance, Sec. 1.16). The Equal Opportunity Officer will determine compliance or non-compliance, upon a complete and substantial review of successful bidder's equal opportunity policies, procedures, and practices.

The undersigned signatory for the bidder represents and warrants that he has full and complete authority to submit this proposal to the City, and to enter into a contract if this proposal is accepted.

**RETURN TWO (2) COMPLETE COPIES OF PROPOSAL AND SUPPORT MATERIAL.
MARK OUTSIDE OF BID ENVELOPE AS FOLLOWS: SEALED BID FOR SPEC. 07-189,
ALONG WITH COMPANY NAME AND ADDRESS**

COMPANY NAME

SIGNATURE

STREET ADDRESS OR P.O. BOX

PRINT NAME

CITY, STATE

ZIP CODE

TITLE

TELEPHONE

DATE

E-MAIL ADDRESS

TERMS OF PAYMENT

Bids may be inspected in the Purchasing Division during normal business hours after tabulation and review by a Purchasing Agent. Bid tabulations can be viewed on our website at: lincoln.ne.gov
Keyword: **Bid**

The Intent to Award will be listed on the website when a recommendation is received from the Department.

SPECIFICATIONS
RAIN GARDENS/RAIN BARRELS AND NO/LOW PHOSPHORUS FERTILIZER

1. SCOPE

- 1.1 These services shall be performed for the City of Lincoln's Public Works Department, Watershed Management Division in cooperation with individual home owners.
- 1.2 All recipients of these services must live in the Holmes Lake Watershed
 - 1.2.1 **Area generally bounded by South Street to Nebraska Hwy. 2 and 58th Street to 95th Street.**
- 1.3 Contractor shall provide all labor, tools, and materials necessary to perform specified landscape services for the installation of rain gardens at location(s) to be determined, for the term of the service agreement.
- 1.4 Contractor shall provide all labor, tools, and materials necessary to provide and install rain barrels at home owner location(s) to be determined, for the term of the service agreement. (Limit of one rain barrel per household.)
- 1.5 Contractor shall visit each proposed site and determine if site is suitable for a rain garden.
- 1.6 Contractor shall provide no/low phosphorus fertilizer (maximum 2% phosphorus) by the bag.
- 1.7 The attached sample service agreement shall be executed with each Contractor selected for award of bid.
 - 1.7.1 Work shall be performed in accordance with the Specifications for Landscape Services and installation of water quality features stated in the service agreement.
- 1.8 The term of the initial service agreement is from signing of contract, 2007, through June, 2008.
- 1.9 The City or Contractor may terminate the service agreement at any time without cause by providing written notice thereof to the other party.
- 1.10 For additional information regarding these specifications, please contact Vince M. Mejer, City of Lincoln Purchasing Department, via E-mail, vmejer@lincoln.ne.gov.

2. CONTRACT AND INSURANCE

- 2.1 Within fourteen (14) calendar days after the award of bid, the Contractor shall execute and deliver to the City a written service agreement between the Contractor and the City together with a Certificate of Insurance in accordance with the requirements specified in the attached insurance clause to be used for all City Contracts.
 - 2.1.1 All certificates of insurance shall be filed with the City on the standard Accord Certificate of Insurance form showing specific limits of insurance coverage required and showing the City of Lincoln as an "Additional Insured" as pertains to these services.
 - 2.1.2 Such certificates of insurance shall specifically state that insurance policies are to be endorsed to require the insurer to provide the City thirty (30) days written notice of cancellation or non-renewal, or of any material reduction of insurance coverage.

3. BIDDING PROCEDURE AND AWARD OF CONTRACT

- 3.1 Read attached Instructions to Bidders prior to submitting bid proposal.
- 3.2 Bidders are encouraged to inspect Holmes Lake Watershed area where required landscape services are to be performed
- 3.3 The following documents must be submitted as part of the bid:
 - 3.3.1 Completed and signed Bid Proposal Form.
 - 3.3.2 Qualifications statement.
 - 3.3.3 Reference list indicating locations of at least five similar landscape gardens constructed within the last five years, contact person, company or property owner name and telephone number.
 - 3.3.4 Listing of all equipment to be used in performing specified landscape services.
- 3.4 The bid will be awarded to the lowest responsible responsive bidder whose proposal will be most advantageous to the City and as the City deems will best serve its requirements.
 - 3.4.1 In determining the low responsible bid, consideration may be given to the following factors:
 - 3.4.1.1 Ability, capacity, and skill of the bidder to comply with the specifications and perform the work required by the service agreement.
 - 3.4.1.2 Character, integrity, reputation, judgement, work related experience and efficiency of the bidder.
 - 3.4.1.3 Ability of the bidder to perform the work within the time specified for specified services.

- 3.4.1.4 Previous and current compliance of the bidder with laws and regulations relating to the required work to be done.
 - 3.4.1.5 Quality of the bidder's performance of previous work.
 - 3.4.1.6 Total cost of the Bid Proposal submitted.
 - 3.4.1.7 Any other information deemed relevant to the service agreement as determined by the City.
- 3.5 The City may make any investigation deemed necessary to determine the ability of a bidder to perform in accordance with the Specifications for Landscape Services and the requirements of the service agreement.
- 3.6 The City reserves the right to reject any bid based on facts resulting from any investigation which indicates that a bidder is not properly qualified to perform the obligations of any resulting service agreement.

4. BIDDER QUALIFICATIONS

- 4.1 Bidder must be an experienced landscape contractor who has performed landscape services similar in material, design and extent to that required for contracted area.
- 4.2 Bidder must have a valid and current Nebraska Nursery Grower, Dealer or Broker License from the Nebraska Department of Agriculture.
- 4.3 Bidder must currently own necessary and proper tools and equipment needed to perform required landscape services.
 - 4.3.1 Bids will **not** be awarded to bidders who would purchase such necessary tools and equipment contingent upon their being awarded the bid.
- 4.4 Services such as rain gutter/down spout modifications and under drain installation may be subcontracted but the primary Contractor shall be responsible.

5. RESPONSIBILITIES OF THE CONTRACTOR

- 5.1 Provide all equipment, labor, materials, fuel, lubricants, repair, maintenance, etc. to perform required landscape services to the satisfaction of the City.
- 5.2 Prepare bills and collect home owner's portion (10%) of rain garden cost.
- 5.3 Provide landscape services in a timely and efficient manner as stipulated in the service agreement.
- 5.4 Protect all existing plant materials outside the area of rain garden or rain barrel construction and replace any or all damaged landscape at no cost to City resulting from landscape work done by contractor.
- 5.5 Protect all existing water boxes/hookups at designated location(s) and repair or replace any or all that are damaged during landscape work at no cost to the City.
- 5.6 Initiating, maintaining, supervising, observing and complying with all safety precautions and programs in connection with the work done in accordance with all applicable federal, state and local laws, regulations and ordinances.
- 5.7 Have space and staff available to hand out and track bags of free no/low phosphorus (less than 2% phosphorus) fertilizer.

6. RESPONSIBILITIES OF THE CITY

- 6.1 Contract administration shall be done by the City of Lincoln Public Works & Utilities Department Watershed Management Division.
- 6.2 Payment of invoices for landscape services performed by Contractor shall be made by the City of Lincoln.
 - 6.2.1 In the case of rain gardens, the maximum payment of invoices will be 90%.
- 6.3 Submit potential sites for rain garden landscaping services and rain barrel installations to Contractor.
- 6.4 Publicize this landscaping services program.

7. BASIS OF PAYMENT

- 7.1 Request for payment shall be based on the lump sum prices indicated on the Bid Proposal Form for work actually done.
- 7.2 All invoices and landscape services performed pursuant to the service agreement shall be submitted to Ed Kouma of the Lincoln Public Works & Utilities Department Watershed Management Division.
- 7.3 The contractor shall submit one invoice monthly for payment of services performed

- 7.4 The Contractor's invoices shall include company name, address and telephone number, the job site locations, date(s) and description of all work done and list of charges as established for such work in the Contractor's Bid Price Proposal
 - 7.4.1 Invoices for rain gardens to include land owner name, phone number and address for each rain garden installed.
 - 7.4.2 Invoices for rain barrels to include land owner name, phone number and address for each rain barrel installed.
 - 7.4.3 Invoices for free bags of no/low phosphorus fertilizer (maximum 2% phosphorus) to include land owner name, phone number and address for each recipient. (limit of 2 bags per household).
- 7.5 All costs associated with labor, materials, equipment, equipment operation, equipment maintenance and repair costs shall be included in the lump sum bid price submitted on the Bid Proposal Form.
- 7.6 City shall be responsible to pay Contractor 90% of Contractor's lump sum price bid for the rain garden.
 - 7.6.1 City has no responsibility to pay Contractor for homeowner's 10% of the cost of the rain garden.
- 7.7 City shall be responsible to pay Contractor 100% of Contractor's lump sum bid price for rain barrels, bags of fertilizer, and site inspections.

**LANDSCAPE SERVICES AGREEMENT
FOR
Rain Garden or Rain Barrel Installation at Various Locations
In Holmes Lake Watershed**

THIS AGREEMENT, made this _____ day of _____, 2007 by and between _____, hereinafter referred to as Contractor and the City of Lincoln, Nebraska, a body corporate and politic, hereinafter referred to as City.

WHEREAS, the City wishes to engage a Contractor in accordance with terms and conditions herein to provide landscape services for the City at various location(s);

NOW, THEREFORE, WITNESSETH, that the parties hereto mutually agree as follows:

1. TERM

The Contractor hereby agrees to perform landscape services as hereinafter set forth during the term of the Agreement from the date of this agreement, through June 30, 2008.

2. RATES

- 2.1 The Contractor agrees to provide services in accordance with this Agreement at the lump sum prices set forth in the Contractor's Bid Proposal, attached hereto and incorporated herein.
- 2.2 The Contractor further agrees that the lump sum prices set forth in their submitted Bid Proposal shall remain in effect during the term of this Agreement.

3. REQUIREMENTS OF THIS LANDSCAPE AGREEMENT

3.1 Rain Garden. Contractor shall:

- 3.1.1 Confirm that the site is in the Holmes Lake Watershed.
- 3.1.2 Consult with home owner and visit site to determine if site is suitable for a rain garden.
- 3.1.3 Check drainage pattern, slope of land, proximity to down spouts or driveway runoff and assure rain garden is located to allow runoff to flow into it and that the location complements the house and other yard features.
- 3.1.4 Key points for location are:
 - 3.1.4.1 At least ten feet from house foundation.
 - 3.1.4.2 Away from underground service lines and utilities.
 - 3.1.4.3 Not directly beneath a tree.
 - 3.1.4.4 Place on flattest part of yard. (Slope must be less than 12%) Size of rain garden should be five to eight percent of the roof or concrete area being drained.
- 3.1.5 Perform soil percolation test by digging a six inch deep hole and filling it with water.
 - 3.1.5.1 If water takes longer than twenty four hours to soak away the soil permeability is not adequate and if rain garden is installed soil must be modified by mixing soil with sand and compost to a depth of four feet to improve permeability.
 - 3.1.5.2 Under these conditions an underdrain must be provided to avoid water standing in the rain garden.
- 3.1.6 Construct rain garden including all elements including but not limited to staking, grade determination, excavation, tilling or adding compost, sand or other materials to improve permeability, installation of under drain, final grading, placement of plants, mulching and seeding as required.
 - 3.1.6.1 Select plants that can "have their feet wet" for short periods.
 - 3.1.6.2 Plants of similar species and color should be grouped together and placed randomly within the rain garden. (Contact City of Lincoln, Watershed Management Division for a list of acceptable plants.)
 - 3.1.6.3 Construction shall include any modification of existing sprinkler systems, down spouts and under drains as necessary and as agreed to with home owner.
- 3.1.7 Provide one year warranty with any plants used.

3.2 Rain Barrel. Contractor shall:

- 3.2.1 Confirm that the site is in the Holmes Lake Watershed.
- 3.2.2 Consult with home owner and visit site to determine if site is suitable for a rain barrel
- 3.2.3 Provide and install rain barrel with volume of 50 gallons or greater with all accessories including but not limited to support blocks, pipes, valves, fittings, covers, overflow bypass, down spout bypasses or modifications.

- 3.3 **Fertilizer.** Contractor shall:
 - 3.3.1 Confirm that recipient of free fertilizer resides in Holmes Lake Watershed
 - 3.3.2 Provide one bag of no/low phosphorus fertilizer per customer request
 - 3.3.3 Maintain a dated log of fertilizer recipients showing name and address of recipient.
- 3.4 One year warranty period. Contractor shall:
 - 3.4.1 Consult with home owner if requested by the home owner to assure rain garden or rain barrel functions as intended.
 - 3.4.2 Replace any dead plants as needed within the one year period.
- 3.5 Sources of additional information.
 - 3.5.1 Plant information at the Nebraska Statewide Arboretum
<http://arboretum.unl.edu/plantinfo.html>
 - 3.5.2 University of Nebraska-Lincoln Extension, Rain Garden NebGuide

4. TERMINATION

- 4.1 The City or Contractor may terminate the service agreement at any time without cause by providing written notice thereof to the other party.

5. INSURANCE

- 5.1 The Contractor shall provide insurance in accordance with the City of Lincoln's standard insurance clause to be used for all City contracts/agreements which is hereby made a part of this agreement.

6. INDEMNIFICATION

- 6.1 The Contractor agrees to indemnify and hold harmless and defend the City and any of their officers, agents, servants and employees from any and all claims resulting from injuries, including death, bodily injury, property damage, or any other losses arising out of or in connection with or in any way associated with the performance of the terms and conditions of this agreement.
- 6.2 The Contractor shall not be required to indemnify the City for any damage resulting from the sole negligence of the City or its employees.

7. NON-DISCRIMINATION

- 7.1 The parties agree that in connection with the carrying out of this agreement the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age, or marital status.
- 7.2 The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, ancestry, disability, age, or marital status.
 - 7.2.1 Such actions shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.
- 7.3 Any breach of this provision of the Agreement shall be regarded as a material breach.

8. DRUG FREE WORKPLACE

- 8.1 The Contractor agrees that in the performance of this Agreement, neither the Contractor nor any employee of the Contractor shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity covered by this Agreement.
- 8.2 The City reserves the right to request a copy of the Contractor's drug free workplace policy.

9. INDEPENDENT CONTRACTOR

- 9.1 The parties understand that this contractual agreement shall not create an employer/employee relationship and the Contractor, his employees, and any person acting on behalf of the Contractor shall be deemed to be an independent contractor during the term of this Contract.

10. INVOICES

- 10.1 All invoices for landscape maintenance services performed pursuant to this Agreement shall be submitted to the City of Lincoln Public Works & Utilities, Watershed Management Division, Attn: Ed Kouma.
- 10.2 Invoices shall be submitted according to the guidelines outlined in the **SPECIFICATIONS FOR LANDSCAPE SERVICES** item No. 7. **BASIS FOR PAYMENT** of said specifications.
- 10.3 The Contractor's invoices shall include the job site location, date of work done, and a fully itemized list of landscape services performed.

11. ASSIGNMENT

- 11.1 This Agreement shall not be assigned by Contractor to any other party without first obtaining the written consent of the City.

12. GOVERNING LAW

- 12.1 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

Dated this _____ day of _____, 2007.

City of Lincoln, Nebraska

Attest

City Clerk

Mayor

Contractor

Company Name

By:

Street Address

Name (Print)

City State Zip Code

Signature

Telephone Number(s)

Title

APPENDIX 1: CONTRACTOR INVOICE

Contractor Name
Contractor Address
Contractor Phone Number

Date of Invoice

Invoice Number	Billing Period

Date of work performed	Location and itemized description of the work performed	List of charges as established by contract
		Total Amount due

Total Amount of Work to date: \$ _____

Total Amount Paid to date: \$ _____

Amount owed with this billing \$ _____

INSTRUCTIONS TO BIDDERS

CITY OF LINCOLN, NEBRASKA

1. BIDDING PROCEDURE

- 1.1 Bidder shall submit one (1) complete set of the bid documents and all supporting material, unless otherwise stipulated. All appropriate blanks shall be completed. Any interlineation, alteration or erasure on the specification document shall be initialed by the signer of the bid. Bidder shall not change the proposal form nor make additional stipulations on the specification document. Any amplified or qualifying information shall be on the bidder's letterhead and firmly attached to the specification document.
- 1.2 Bid prices shall be submitted on the Proposal Form included in the bid document.
- 1.3 Bidders may submit a bid on an "all or none" or "lump sum" basis, but should also submit a quotation on an item-by-item basis. Bidding documents shall be clearly marked indicating the kind of proposal being submitted.
- 1.4 Any person signing a bid for a firm, corporation, or other organization must show evidence of his authority so to bind such firm, corporation, or organization.
- 1.5 Bids received after the time and date established for receiving bids will be rejected.
- 1.6 If bidding on a Construction Contract, the City of Lincoln's Standard Specifications for Municipal Construction 2006 shall apply.
 - 1.6.1 Bidders may obtain this document from the City's Design Engineering Division of Public Works & Utilities for a small fee.
 - 1.6.2 Said document can be reviewed at Design Engineering or the Purchasing Division.
 - 1.6.3 The Standard Conditions are available on the web site.
<http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stdspec/index.htm>

2. BIDDER'S SECURITY

- 2.1 Bid security, as a guarantee of good faith, in the form of a certified check, cashier's check, or bidder's bond, may be required to be submitted with this bid document, as indicated on the Proposal Form.
- 2.2 If alternates are submitted, only one bid security will be required, provided the bid security is based on the amount of the highest gross bid.
- 2.3 Such bid security will be returned to the unsuccessful bidders when the award of bid is made.
- 2.4 Bid security will be returned to the successful bidder(s) as follows:
 - 2.4.1 For single order bids with specified quantities: upon the delivery of all equipment or merchandise, and upon final acceptance by the City.
 - 2.4.2 For all other contracts: upon approval by the City of the executed contract and bonds.
- 2.5 City shall have the right to retain the bid security of bidders to whom an award is being considered until either:
 - 2.5.1 A contract has been executed and bonds have been furnished.
 - 2.5.2 The specified time has elapsed so that the bids may be withdrawn.
 - 2.5.3 All bids have been rejected.
- 2.6 Bid security will be forfeited to the City as full liquidated damages, but not as a penalty, for any of the following reasons, as pertains to this specification document:
 - 2.6.1 If the bidder fails to deliver the equipment or merchandise in full compliance with the accepted proposal and specifications.
 - 2.6.2 If the bidder fails or refuses to enter into a contract on forms provided by the City, and/or if the bidder fails to provide sufficient bonds or insurance within the time period as established in this specification document.

3. BIDDER'S REPRESENTATION

- 3.1 Each bidder by signing and submitting a bid, represents that the bidder has read and understands the specification documents, and the bid has been made in accordance therewith.
- 3.2 Each bidder for services further represents that the bidder has examined and is familiar with the local conditions under which the work is to be done and has correlated the observations with the requirements of the bid documents.

4. CLARIFICATION OF SPECIFICATION DOCUMENTS

- 4.1 Bidders shall promptly notify the Purchasing Agent of any ambiguity, inconsistency or error which they may discover upon examination of the specification documents.
- 4.2 Bidders desiring clarification or interpretation of the specification documents shall make a written request which must reach the Purchasing Agent at least five (5) calendar days prior to the date and time for receipt of bids.

- 4.3 Changes made to the specification documents will be made by written addenda to all known prospective bidders and posted on the City-County website at lincoln.ne.gov Keyword - Bid.
- 4.4 Oral interpretations or changes to the Specification Documents made in any other manner, will not be binding on the City; and bidders shall not rely upon such interpretations or changes.

5. ADDENDA

- 5.1 Addenda are written instruments issued by the City prior to the date for receipt of bids which modify or interpret the specification document by addition, deletion, clarification or correction.
- 5.2 Copies of addenda will be made available for inspection at the office of the Purchasing Agent and on the City-County website.
- 5.3 No addendum will be issued later than forty-eight (48) hours prior to the date and time for receipt of bids, except an addendum withdrawing the invitation to bid, or an addendum which includes postponement of the bid.
- 5.4 Bidders shall ascertain prior to submitting their bid that they have received all addenda issued, and they shall acknowledge receipt of addenda on the proposal form.

6. INDEPENDENT PRICE DETERMINATION

- 6.1 By signing and submitting this bid, the bidder certifies that the prices in this bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder prior to bid opening directly or indirectly to any other bidder or to any competitor; no attempt has been made, or will be made, by the bidder to induce any person or firm to submit, or not to submit, a bid for the purpose of restricting competition.

7. ANTI-LOBBYING PROVISION

- 7.1 During the period between the bid advertisement date and the contract award, bidders, including their agents and representatives, shall not lobby or promote their bid with any member of the City Council or City Staff except in the course of City-sponsored inquiries, briefings, interviews, or presentations, unless requested by the City.

8. BRAND NAMES

- 8.1 Wherever in the specifications or proposal form brand names, manufacturer, trade name, or catalog numbers are specified, it is for the purpose of establishing a grade or quality of material only; and the term "or equal" is deemed to follow.
- 8.2 It is the bidder's responsibility to identify any alternate items offered in the bid, and prove to the satisfaction of the City that said item is equal to, or better than, the product specified.
- 8.3 Bids for alternate items shall be stated in the appropriate brand on the proposal form, or if the proposal form does not contain blanks for alternates, bidder MUST attach to the specification documents on Company letterhead a statement identifying the manufacturer and brand name of each proposed alternate, plus a complete description of the alternate items including illustrations, performance test data and any other information necessary for an evaluation. The bidder must indicate any variances by item number from the specification document no matter how slight. Bidder must fully explain the variances from the specification document, since brochure information may not be sufficient.
- 8.4 If variations are not stated in the proposal, it will be assumed that the item being bid fully complies with the City's specifications.

9. DEMONSTRATIONS/SAMPLES

- 9.1 Bidders shall demonstrate the exact item(s) proposed within seven (7) calendar days from receipt of such request from the City.
- 9.2 Such demonstration can be at the City delivery location or a surrounding community.
- 9.3 If bidder does not have an item in the area, it will be at the bidder's expense to send appropriate City personnel to the nearest location to view and inspect proposed item(s).
- 9.4 If items are small and malleable, the bidder is proposing an alternate product, the bidder MUST supply a sample of the exact item. Samples will be returned at bidder's expense after receipt by the City of acceptable goods. Bidders must indicate how samples are to be returned.

10. DELIVERY (Non-Construction)

- 10.1 Each bidder shall state on his proposal form the date upon which he can make delivery of all equipment or merchandise.
- 10.2 The City reserves the right to cancel orders, or any part thereof, without obligation, if delivery is not made within the time(s) specified on the proposal form.

- 10.3 All bids shall be based upon **inside** delivery of the equipment/ merchandise F.O.B. the City at the location specified by the City, with all transportation charges paid.
- 10.4 At the time of delivery, a designated City of Lincoln employee will sign the invoice/packing slip. The signature will only indicate that the order has been received and the items actually delivered agree with the delivery invoice. This signature does not indicate all items met specifications, were received in good condition and/or that there is not possible hidden damage or shortages.

11. WARRANTIES, GUARANTEES AND MAINTENANCE

- 11.1 Copies of the following documents must accompany the bid proposal for all items being bid:
- 11.1.1 Manufacturer's warranties and/or guarantees.
- 11.1.2 Bidder's maintenance policies and associated costs.
- 11.2 As a minimum requirement of the City, the bidder will guarantee in writing that any defective components discovered within a one (1) year period after the date of acceptance shall be replaced at no expense to the City. Replacement parts of defective components shall be shipped at no cost to the City. Shipping costs for defective parts required to be returned to the bidder shall be paid by the bidder.

12. ACCEPTANCE OF MATERIAL

- 12.1 All components used in the manufacture or construction of materials, supplies and equipment, and all finished materials, shall be new, the latest make/model, of the best quality, and the highest grade workmanship.
- 12.2 Material delivered under this proposal shall remain the property of the bidder until:
- 12.2.1 A physical inspection and actual usage of this material is made and found to be acceptable to the City; and
- 12.2.2 Material is determined to be in full compliance with the specifications and accepted proposal.
- 12.3 In the event the delivered material is found to be defective or does not conform to the specification documents and accepted proposal, then the City reserves the right to cancel the order upon written notice to the bidder and return materials to the bidder at bidder's expense.
- 12.4 Successful bidder shall be required to furnish title to the material, free and clear of all liens and encumbrances, issued in the name of the City of Lincoln, Nebraska, as required by the specification documents or purchase orders.
- 12.5 Selling dealer's advertising decals, stickers or other signs shall not be affixed to equipment. Vehicle mud flaps shall be installed blank side out with no advertisements. Manufacturer's standard production forgings, stampings, nameplates and logos are acceptable.

13. BID EVALUATION AND AWARD

- 13.1 The signed bid proposal shall be considered an offer on the part of the bidder. Such offer shall be deemed accepted upon issuance by the City of purchase orders, contract award notifications, or other contract documents appropriate to the work.
- 13.2 No bid shall be modified or withdrawn for a period of ninety (90) calendar days after the time and date established for receiving bids, and each bidder so agrees in submitting the bid.
- 13.3 In case of a discrepancy between the unit prices and their extensions, the unit prices shall govern.
- 13.4 The bid will be awarded to the lowest responsible, responsive bidder whose proposal will be most advantageous to the City, and as the City deems will best serve its requirements.
- 13.5 The City reserves the right to accept or reject any or all bids; to request rebids; to award bids item-by-item, with or without alternates, by groups, or "lump sum"; to waive minor irregularities in bids; such as shall best serve the requirements and interests of the City.
- 13.6 In order to determine if the Bidder has the experience, qualifications, resources and necessary attributes to provide the quality workmanship, materials and management required by the plans and specifications, the Bidder may be required to complete and submit additional information as deemed necessary by the City. Failure to provide the information requested to make this determination may be grounds for a declaration of non-responsive with respect to the Bidder.
- 13.7 The City reserves the right to reject irregular bids that contain unauthorized additions, conditions, alternate bids, or irregularities that make the Bid Proposal incomplete, indefinite or ambiguous.
- 13.8 Any governmental agency may piggy back on any contract entered into from this bid.

14. INDEMNIFICATION

- 14.1 The bidder shall indemnify and save harmless the City of Lincoln, Nebraska from and against all losses, claims, damages, and expenses, including, attorney's fees arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Bidder, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Bidder to indemnify or hold harmless the City of Lincoln for any losses, claims damages, and expenses arising out of or resulting from the sole negligence of the City of Lincoln, Nebraska.
- 14.2 In any and all claims against the City or any of its members, officers or employees by an employee of the bidder, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 13.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the bidder or any subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

15. TERMS OF PAYMENT

- 15.1 Unless stated otherwise, the City will begin processing payment within thirty (30) calendar days after all labor has been performed and all equipment or other merchandise has been delivered, and all such labor and equipment and other materials have met all contract specifications.

16. LAWS

- 16.1 The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this proposal and any agreement reached as a result of this process.
- 16.2 Bidder agrees to abide by all applicable State and Federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and corporations as to inventions, copyrights, patents and patent rights.

17. AFFIRMATIVE ACTION

- 17.1 The City of Lincoln-Lancaster County Purchasing Division provides equal opportunity for all bidders and encourages minority businesses and women's business enterprises to participate in our bidding process.

18. LIVING WAGE

- 18.1 The bidders agree to pay all employees employed in the performance of this contract, a base wage of not less than the City Living Wage per section 2.81 of the Lincoln Municipal Code. This wage is subject to change every July.

19. EXECUTION OF AGREEMENT

- 19.1 Depending on the type of service provided, one of the following three (3) methods will be employed. The method applicable to this contract will be checked below:
- ___ a. This Contract shall consist of a **PURCHASE ORDER** and a copy of the suppliers signed bid (or referenced bid number) attached and that the same, in all particulars, becomes the agreement and contract between the parties hereto: that both parties thereby accept and agree to the terms and conditions of said bid documents, and that the parties are bound thereby and the compensation to be paid the Supplier is as set forth in the Supplier's Bid. Items not awarded, if any, have been deleted.
- ___ b. The contract shall consist of a **YEARLY AGREEMENT** and a copy of the suppliers signed bid attached and that the same, in all particulars, becomes the agreement and contract between the parties hereto. That both parties thereby accept and agree to the terms and conditions of said bid documents, and that the parties are bound thereby and the compensation to be paid the Supplier is as set forth in the Suppliers' Bid. Items not awarded, if any, have been deleted.
- X c. Three (3) copies of the **CONTRACT**, unless otherwise noted.
1. City will furnish three (3) copies of the Contract to the successful Bidder who shall prepare attachments as required. Insurance as evidenced by a Certificate of Insurance, surety bonds properly executed, and Agreement signed with the date of signature shall be attached.
2. The prepared documents shall be delivered to the City within 10 days (unless otherwise noted).
3. The City will sign the Contract Agreement, insert the date of signature at the beginning of the Contract Agreement, prepare an Executive Order to go the Mayor for signature.
4. Upon approval and signature from the Mayor, the City will return one copy to the Contractor.

INSURANCE REQUIREMENTS FOR ALL CITY CONTRACTS

1. GENERAL PROVISIONS

- A. **Indemnification.** The Contractor shall indemnify and save harmless the City of Lincoln, Nebraska from and against all losses, claims, damages, and expenses, including attorney's fees, arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Contractor, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Contractor to indemnify or hold harmless the City of Lincoln for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City of Lincoln, Nebraska.
- B. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to Protect Contractor and City against all liabilities and hazards as provided in this article throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under this Section and such insurance has been approved by the City Attorney for the City of Lincoln, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.
- C. **Occurrence Basis Coverage.** All insurance shall be provided on an **occurrence basis** and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.
- D. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.
- E. **Certificates Showing Coverage.** All certificates of insurance shall be filed with the City Attorney, and may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show the City of Lincoln as additional insured, including by specific endorsement where necessary, as indicated in the following requirements. Such certificate shall specifically state that the related insurance policies are to be endorsed to require the insurer to provide the City of Lincoln thirty days, notice of cancellation, non-renewal or any material reduction in the stated amounts or limits of insurance coverage.
- F. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

2. INSURANCE REQUIREMENTS

- A. **Scope of Required Coverage.** The Contractor shall take out and maintain during the life of Contract such insurance in the forms and minimum amounts as specified in this Article and as will protect Contractor and City from the following claims arising out of or resulting from or in connection

with the Contractor's operations, undertakings or omissions directly or indirectly related to the Contract, whether by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' compensation, disability benefit, or other employee benefit acts;
- (2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;
- (3) Claims customarily covered under personal injury liability coverage;
- (4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;
- (5) Claims arising out of ownership, maintenance or use of any motor vehicle;
- (6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

- B. Worker's Compensation Insurance and Employer's Liability Insurance.** The Contractor shall provide applicable statutory Worker's Compensation Insurance with minimum limits as provided below covering all Contractor's employees, and in the case of any subcontracted work, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for Subcontractor's employees.

The Contractor shall provide Employer's Liability Insurance with minimum limits as provided below placed with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each Subcontractor similarly to maintain Employer's Liability Insurance on the Subcontractor's employees.

Coverage	Listing	Min Amt	Notes
Worker's Comp.			
	State	Statutory	
	Applicable Federal	Statutory	
Employer's Liability			
	Bodily Injury by accident	\$500,000	each accident
	Bodily Injury by disease	\$500,000	each employee
	Bodily Injury	\$500,000	policy limit

C. Commercial General Liability Insurance.

- (1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney.

Coverage	Min Amt	Notes
General	\$2,000,000	Aggregate
Products and Completed Operations	\$2,000,000	Aggregate
Personal and Advertising Injury	\$1,000,000	
Each Occurrence	\$1,000,000	
Fire Damage Limit	\$ 100,000	any one fire
Medical Damage Limit	\$ 10,000	any one person

(2) The required Commercial General Liability Insurance shall also include the following:

- Coverage for all premises and operations
- Endorsement to provide the general aggregate per project endorsement
- Personal and advertising injury included
- Operations by independent contractors included
- Contractual liability coverage included
- X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
- Any fellow employee exclusions shall be deleted
- Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
- Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
- Contractual Liability coverage shall include contractually assumed defense costs in addition to any policy limits.

(3) If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer).

(4) City may at its sole option, and in lieu of being additional insured on the Contractor's policy, by written requirement in the Special Provisions or by written change order, require Contractor to provide a separate Owner's Protective liability policy. The premium cost to obtain such insurance shall be as paid as provided in the Special Provision or change order, with any related cost savings as reasonably determined by the City being reimbursed or paid to the City.

D. Vehicle liability insurance coverage.

- The Contractor shall provide reasonable insurance coverage for all owned, non-owned, hired and leased vehicles with specific endorsements to include contractual liability coverage and delete any fellow employee exclusion.
- If specifically required in the Special Provisions, the required coverage shall also include an endorsement for auto cargo pollution (ISO® form CA 99 48).

E. Railroad Protective Liability. If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with

minimum limits for bodily injury and property damage of \$2,000,000 per occurrence, \$6,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City Attorney's office prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

- F. **Umbrella or Excess Insurance.** The Contractor shall provide Umbrella or Excess insurance coverage with minimum coverage limits of \$3,000,000 each occurrence and aggregate.
- G. **City included as Insured on Contractor's Policy – Endorsements required.**
The Contractor shall provide adequate written documentation, including applicable ACORD certificates, declarations pages or other acceptable policy information demonstrating that the City is included as an additional insured along with the Contractor with respect to all of the coverages required in this "Section 2A Insurance Requirements," except for applicable Worker's Compensation coverage, to include all work performed for the City and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The documentation or endorsement shall specifically include the city as an additional insured for purposes of Products and Completed Operations. The inclusion of the City as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for the City, whether on an excess, contributory or other basis regardless of any other insurance coverage available to the City.

3. **CONTRACTOR'S INDEMNITY – CONTRACTUAL LIABILITY INSURANCE**

- A. To the same extent as specified for minimum coverage requirements in Section 2 above, the required insurance shall include contractual liability coverage to include indemnification and hold harmless agreements and provisions in the related Contract Documents, specifically including the following provision:
- (1) To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City, its officers, agents, employees, volunteers and consultants from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs arising out of or related to the Contract or the Contractor's activities, errors, or omissions related to the Contract including liabilities or penalties imposed by applicable, law, rule or regulation in connection therewith; provided that such claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs:
 - is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use therefrom, and
 - is caused in whole or in part by any act or omission of the Contractor, any subcontractor, agent, officer, employee, or assigns of the same or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in whole or in part by a party indemnified hereunder.
 - (2) Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.
- B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against the City, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.

- C. The obligations of indemnification herein shall not include or extend to:
- (1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to the City and related to the Contract; and
 - (2) Any claims arising out of the negligence of the City to the extent the same is the sole and proximate cause of the injury or damage so claimed.
- D. In the event of any litigation of any such claims shall be commenced against the City, Contractor shall defend the same at Contractor's sole expense upon notice thereof from the City. Contractor shall notify the insuring company that the City reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of the City without the express written consent of the City.

4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.

- A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.
- B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against the City.

5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.

- A. The Contractor shall promptly notify the City in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to the City shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.
- B. In the event the City receives a claim or otherwise has actual knowledge of an any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, the City shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however the City shall have no duty to inspect the project to obtain such knowledge, and provided further that the City's obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.

6. PROPERTY INSURANCE/ BUILDER'S RISK.

- A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until the City completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of the City, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be \$5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.

- B. All related Property Insurance shall be provided on a "Special Perils" or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for City's related costs and expenses (as owner) including labor required as a result of such loss.
- C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.
- D. The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by the City.